

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1670 & 1671/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2014-15 & 2015-16)

The Uttar Gujarat Uma Co-op Credit Society Ltd. 56, Uttar Gujarat, Patel Nagar Society, Opp. Mohan Cinema, Jahangirpura, Ahmedabad - 380016	बनाम/ Vs.	Income Tax Officer Ward -6(1)(5), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACAT5413H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Sunil H. Talati, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri L. P. Jain, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	21/02/2019
घोषणा की तारीख /Date of Pronouncement	28/02/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the Assessee against the respective orders of the Commissioner of Income Tax (Appeals)-6, Ahmedabad ('CIT(A)' in short), dated 31.08.2017 & 01.05.2018 arising in the assessment orders dated 23.12.2016 & 15.12.2017 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs 2014-15 & 2015-16.

ITA No. 1670/Ahd/2018-AY 2014-15

2. The grounds of appeal raised by the assessee read as under:

- “1. *The Ld.CIT(A) has erred in law and on facts in making a fresh addition of Rs 3,30,062/- on account of interest income received from Co. Operative bank . It is submitted that on facts and circumstances of the case, the afresh addition made of Rs 3,30,062/- be deleted.*
2. *The Ld CIT(A) has erred in law and on facts in non granting the deduction of interest income claimed u/s 80P(2)(d) of the Act. On the facts and circumstances of the case, the incorrect addition made of Rs 3,30,062/- deserves to be deleted. It may held so now.*
3. *Without prejudice to the above, Ld. CIT(A) has erred in considering the interest income received on investment with bank of Rs 3,30,062/- as fully taxable u/s. 56 of the Act without allowing the Pro-rata expenditures incurred u/s 57 of the Act. It is submitted that the only net interest income received after allowing the Pro-rata expenditure incurred be taxed.”*

3. The assessee, a co-operative credit society, filed its return of income which *inter alia* included interest income amounting to Rs.3,28,923/- derived from Ahmedabad District Co-operative Bank (ADC) and Rs.1,139/- derived from Axis Bank. The return was subjected to scrutiny assessment and certain additions were made by the AO. The assessee preferred appeal before CIT(A) on those additions with which we are not presently concerned as the assessee is no longer aggrieved.

4. In the first appeal against the order of the AO on other issues, the CIT(A), however, denied deduction of the aforesaid amount aggregating to Rs.3,30,662/- claimed u/s. 80P of the Act by the assessee in exercise of its power of enhancement.

5. The assessee is in appeal before the Tribunal against the aforesaid action of the CIT(A).

6. When the matter was called for hearing, the learned AR for the assessee at the outset submitted that the appeal has been filed by the assessee belatedly. The learned AR adverted our attention to the affidavit filed in this regard citing reasons for condonation of delay and urged for a benign view and sought condonation of delay of 255 days in filing the appeal before the Tribunal. A perusal of the affidavit gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the delay is condoned.

7. Adverting further, the learned AR for the assessee submitted that the solitary issue for adjudication in the captioned appeal is whether the assessee society is entitled for deduction of interest earned from surplus invested in private banks and co-operative banks is eligible for deduction under s.80P(2)(d) of the Act as claimed or not. The learned AR referred to various judicial precedents to prop up its case for eligibility of deduction. In this regard, the learned AR for the assessee first adverted our attention to para 16 of the decision of the Hon'ble Gujarat High Court in the case of State Bank of India (SBI) vs. CIT (2016) 72 taxmann.com 64 (Guj) and submitted that the Hon'ble Gujarat High Court has distinguished the availability of deduction under s.80P(2)(a)(i) and 80P(2)(d) of the Act and has categorically observed that "if the appellant wants to avail the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under s.80P(2)(d) of the Act". The learned AR thereafter referred to the decision of the Tribunal in The Peoples Co-operative Credit Society Ltd. vs. ACIT in ITA No. 1891/Ahd/2014 & Ors. order dated 23.03.2018 wherein similar view has been expressed after taking note of the decision of the Hon'ble Gujarat High Court in the case of CIT

vs. Sabarkantha District Cooperative Milk Producers Union Ltd. in
Tax Appeal No. 473 of 2014.

8. The learned DR, on the other hand, relied upon the order of the AO and submitted that Section 80P(2)(d) of the Act provides for deduction towards interest derived by the co-operative society from its investments with other co-operative societies. The investment of surplus in co-operative bank is thus not covered for the purposes of deduction, more so, in the light of Section 80P(4) of the Act. The learned DR further submitted that the deduction is also not available under s.80P(2)(a)(i) of the Act either, in view of the decision of the Hon'ble Supreme Court in the case of The Citizen Co-Operative Society Ltd. v. Asstt. CIT (2017) 88 Taxmann.com 279 (SC).

9. We have carefully considered the rival submissions. The dispute concerns section 80P of the Act which provides for deduction of income of a co-operative society engaged in specified activity catalogued in Section 80P(2) of the Act. The principal controversy in the captioned appeal is towards maintainability of deduction under s.80P(2)(d) of the Act in the hands of the credit co-operative society towards interest earned from deposit placed with co-operative banks, more so, in the light of insertion of s. 80P(4) of the Act by Finance Act, 2006. Thus, the incidental point in issue is whether the benefit of S. 80P denied to coop banks by the insertion of 80P(4) adversely impacts the investment in such banks by a co-op society or not? It is common knowledge that a large number of co-op. societies place their surplus with co-op. banks and seek benefit of Section 80P(2)(d) of the Act on interest income derived. Hence, a nuanced understanding of the raging controversy is strongly needed.

9.1 It is predominantly the case of the assessee that the co-operative banks essentially continue to be co-operative societies and while 'co-operative societies' is a genus term, the 'co-operative banks' are species thereto. Therefore, such co-operative banks are essentially co-operative societies notwithstanding their engagement in banking business. Consequently, it is claimed that the investment in co-operative banks are to be treated at par with investment in co-operative societies for the purposes of eligibility of deduction under s.80P(2)(d) of the Act. The Revenue, on the other hand, has contended that in view of definition provided for co-operative societies under Section 2(19); deduction provided under Section 80P(2)(d) r.w.s. 80P(4) of the Act is not available to investment in a co-operative bank as such investment cannot be treated at par with the investment in co-operative society. It is also contended on behalf of the Revenue that the provisions of Section 80P of the Act are founded on 'principles of mutuality' i.e. common identity between the contributors and participators. The deposit in the co-operative bank lacks the degree of proximity between the members of the society with that of co-operative bank and thus offends this sacrosanct principle of mutuality. It was thus contended that interest income by a co-operative society from a co-operative bank is not covered in the fold of Section 80P(2) of the Act. It is further case of the assessee that exclusion of co-op banks for eligibility of deduction under S. 80P owing to insertion of S. 80P(4) does not, in any manner, take away the benefit available under S. 80P(2)(d) to an investor society (excluding co-op bank) in a co-op bank which is a co-op society for all intent and purposes while carrying on the functions of a bank. It is thus paddled that while a co-op society functioning as a co-op bank is not entitled to benefit of 80P owing to exclusions made, a co-op society not being a co-op bank remains unaffected by S. 80(4) and can enjoy the benefits of S. 80P(2)(d) conferred on the societies on fulfillment of pre-requisites.

9.2 Before we proceed to deal with the issue in hand, it would be apt to quote the relevant provisions governing the controversy in hand.

9.2.1 Section 2(19) defines the meaning of expression 'Co-op Society' as under:

"co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

9.2.2 Income under S. 2(24) of the Act also includes:

the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members

9.2.3 The relevant portion of S. 80-P governing deduction available to co-operative societies is also quoted hereunder:

"Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

- (i) carrying on the business of banking or providing credit facilities to its members; or*
- (ii) a cottage industry ; or*
- (iii) ---*
- (iv) ---*
- (v) ---*
- (vi) ---*
- (vii) ----*

the whole of the amount of **profits and gains of business** attributable to any one or more of such activities :

- (b) -----
- (c) -----

(d) *in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the **whole of such income**;*

- (e) -----
- (f)

(4) *The provisions of this section shall not apply in relation to any **co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*

Explanation.—For the purposes of this sub-section,—

- (a) *"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*
- (b) *"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."*

9.2.4 Part V of Banking Regulation Act, 1949 defines ‘co-operative bank’ in Section 5(cci) as under:

“ Co-operative bank’ means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

9.2.5 A ‘primary co-operative bank’ as per Sectionn 5(ccv) of Part V of Banking Regulation Act, 1949 reads to mean:

*“(ccv) “primary co-operative bank” means a co-operative society, other than a primary agricultural credit society,-
.....*

9.2.6 As per clause (ccvii) of Section 5, however, ‘Central Co-op Bank’ and ‘State Co-op Bank’ shall have the same meanings

respectively assigned to them in the National Bank for Agriculture and Rural Development (NABARD) Act, 1981. NABARD, in turn defines these two terms as under:

Section 2(d) of NABARD defines '*central co-operative bank*' means the

"d. "central co-operative bank" means the principal co- operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:....."

u. "State co-operative bank" means the principal co- operative society in a State, the primary object of which is the financing of other co- operative societies in the State:....."

9.3 Having noted the relevant provisions in earlier para, it would be expedient to firstly refer to the decision of The Citizen Co-Operative Society Ltd. (supra) to gather the rules of interpretation of various sub- sections of the beneficial provision of S. 80P. The Hon'ble Supreme Court inter alia has observed that different heads of exemption enumerated in the Section 80P of the Act should be treated as separate and distinct head of 'exemption'. If any particular category of an income falls within any one head of 'exemption', the assessee would be free from tax notwithstanding that the conditions of other head of exemption are not satisfied and such income is not free from tax under other head of 'exemption'. Thus, in view of the express judicial dicta, provisions of Section 80P(2)(a) and 80P(2)(d) are mutually exclusive and are to be read independent of each other.

9.4 We are presently concerned with the availability of deduction to a co-op society within the realm of Section 80P(2)(d) of the Act. Two things need to be noted in this regard; firstly, unlike Section 80P(2)(a) or (b) or (c) of the Act where the assessee is qualified for deduction of

“profits & gains of business” attributable to one or more of activities enumerated in these sub-sections, Section 80P(2)(d) of the Act, in sharp departure, provides for deduction of “whole of such income” [without any distinction on nature of income] as derived by a co-operative society from its investment with any other co-operative society. Needless to say, in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment and one has to look fairly at the language used. Thus, scope of benefit under s.80P(2)(d) is not restricted to ‘business income’ alone but also extends to income derived from investments ordinarily falling under the head ‘income from other sources’ as well ; secondly doctrine of mutuality is not necessarily a pre-condition in appropriate circumstances, for instance 80P(2)(a(ii)); and thirdly and quite significantly ; the investment by a co-op society in a co-op society should result in interest or dividend income from its investment. Thus what is pertinent is that the investment by the assessee society should be parked in another ‘co-op society’ for the purposes of sub-clause 2(d) of S. 80P. The moot question thus naturally emerges is ; whether the investment in a co-op bank is to be regarded as investment in-effect in a co-op society or not ?

9.5 At this juncture, we also take simultaneous note of such Section 80P(4) of the Act inserted by Finance Act, 2006 whereby a co-operative bank has been deprived of deduction under s.80P of the Act. To put it slightly differently, with advent of section 80P(4), co-op banks have been brought to tax by denying them the benefit of Section 80P of the Act.

9.6 The insertion of Section 80P(4) of the Act has purportedly also obfuscated and cast aspersion on the deductibility of income derived by a co-operative society from investments placed with co-operative

bank under S. 80P(2)(d) of the Act. In this context, it would be interesting to note that the aforesaid clause 80P(4) itself holds that a co-operative bank may also possibly include 'a credit society'; for instance, a primary agricultural credit society. Therefore, on an incisive reading of Section 80P(4) of the Act, it appears that co-operative banks can also be co-operative society for the purposes of Section 80P(2)(d) of the Act. Thus, on a conjoint reading of Section 80P(2)(d) and 80P(4), it would appear that while the co-operative banks in certain cases [as specified in Section 80P(4)] may not qualify for deduction under s.80P of the Act, a co-operative society *per se* would not come within the mischief of sub-section 4 of the Act of Section 80P of the Act and would continue to avail the benefit of Section 80P(2)(d) of the Act. Thus, simply put, while a co-operative bank has been stripped of the benefit of Section 80P of the Act on its various income by insertion of S. 80P(4), the investment in such co-operative bank [bearing the legal trappings of a co-op society] by a co-op society as envisaged in Section 80P(1) of the Act is not divested of such benefit.

9.7 Joining the issue in hand, as per Section 80P(2)(d) of the Act, the only requirement is that the income should be received from investment by a co-operative society in other co-operative society and it is claimed that co-operative bank namely 'Ahmedabad District Co-operative Bank', in the present case, is nothing but a co-operative society recognised by the competent authority of the State as contemplated under Section 2(19) of the Act. On these facts, the eligibility of deduction under Section 80P(2)(d) of the Act is required to be evaluated independent of mutuality doctrine taken away by insertion of S. 2(24)(viiia). The assessee society would thus be entitled to benefit of section 80P(2)(d) on interest income from investment in co-op bank. As noticed from the definition of 'co-op

bank' with reference to Banking Regulation Act, 1949; read with NABARD Act, it is ostensible that the co-op banks of various types are essentially co-op. societies. Hence, the claim of deduction made under S. 80P(2)(d) by a co-op society in such co-op banks can not be denied notwithstanding that some these co-op banks are not eligible for 80P benefits despite being co-op societies.

9.8 Coupled with this, certain observations made by the Hon'ble Gujarat High court in State Bank of India (supra) and in Sabarkantha District (supra) also reinforces that interest earned on fixed deposit with co-operative bank can be said to be qualified for deduction under s.80P of the Act notwithstanding that such observations appear to be in the nature of an *obiter* in the context of those cases.

9.9 At this stage, it would also be pertinent to again restate that for the purposes of Section 80P of the Act, the principle of mutuality has been obliterated in view of insertion of Section 2(24) (viiia) of the Act by Finance Act, 2006 and such principles thus no longer serve as strict guiding principle to test the relief eligible under S. 80P(2)(d) of the Act. Therefore, the plea raised on behalf of the Revenue towards absence of principle of mutuality in such deposits with co-operative banks is a damp squib. Thus, the assessee being a co-operative society as contemplated under s. 80P(1) of the Act, cannot be deprived of benefit of S.80P(2) (d) despite purported absence of mutuality in investment with a co-op bank. We, thus, concur with plea of assessee for allowability of deduction on interest income derived from co-operative society in the form of Co-operative bank on first principles. The issue is accordingly resolved in favour of the assessee and against the Revenue.

9.10 We are conscious of the decision of the Hon'ble Karnatka High Court in Pr.CIT vs. Totagars Co.operative Sales Society (2018) 395 ITR 611 (Karn) wherein it was held that interest income not arising from business operations is not eligible for deduction under s.80P of the Act. A reading of the judgment of the Hon'ble High Court shows that it was guided by nature of activity to determine the character of income for the purposes of Section 80P(2)(d) of the Act. Placing reliance upon the judgments rendered in the context of 80P(2)(a)(i) of the Act, the Hon'ble High Court concluded that the deduction of interest income is not permissible unless it arises from business operations. Clearly, the distinction between Section 80P(2)(a) and 80P(2)(d) of the Act of substantial nature (as discussed in para 9.4 of this order) was not brought to the notice of Hon'ble High Court. The deduction under s. 80P(2)(a) or (b) or (c) of the Act is available only on account of income/profits arising from business activity. However, this requirement is not applicable under s.80P(2)(d) of the Act where whole of the income arising from interest or dividend etc. is allowable without such limitation of business activity. This cardinal difference of overwhelming nature was not brought to the notice of the Hon'ble High Court. Consequently, the decision rendered by the Hon'ble High Court appears to be *subsilentio*. Thus, governed by the observations of the Hon'ble Gujarat High Court in the case of Sabarkantha District (supra) and State Bank of India (supra), we have not hesitation to affirm the plea of the assessee for allowability of deduction.

9.11 It is, however, for the assessee to demonstrate on facts that the investee co-operative bank in question is recognised as a co-operative society indeed within the meaning of Section 2(19) of the Act. A self-declaration from the respective co-op. bank in this regard or any other suitable document may discharge the onus of the assessee towards the status of the co-op. bank. Similarly, the assessee is entitled to avail

deduction of resultant 'income' derived and not gross receipt of interest under S. 80P(2)(d) of the Act in accord with basic rationale of taxation. Hence, all expenses/losses attributable to such interest income are required to be necessarily deducted and only resultant interest income is eligible for deduction under S. 80P(2)(d) of the Act. The AO would thus be at liberty to ascertain these factual aspects for which the assessee shall provide suitable assistance.

10. The alternative claim of the assessee for allowance of pro-rata expenditure against the interest income from investment in co-operative banks etc. is rendered infructuous in view of the endorsement of the main plea. In view of our findings that the assessee is entitled for deduction under s.80P(2)(d) of the Act for resultant income derived from investments placed with co-operative banks, we do not seek to delineate further. Therefore, AO may allow claim of deduction under s. 80P(2)(d) of the Act on net income from interest after reduction of all incidental expenses incurred to earn such income. The issue is thus remitted back to AO for quantification of deduction of interest income in accordance with law on being satisfied that the receiver co-operative bank satisfies to be a co-operative society equally.

11 The interest income of Rs.1,139/- derived by the assessee society from investment with private bank i.e. Axis Bank is however, neither qualified under s. 80P(2)(a)(i) of the Act in the light of the ratio of The Citizen Co-Operative Society Ltd. (supra) nor under s.80P(2)(d) of the Act. Thus, the assessee is not entitled for deduction or interest derived from the private bank.

12. In the result, appeal of the assessee is partly allowed.

ITA No. 1671/Ahd/2018-AY 2015-16

13. The grounds of appeal raised by the assessee read as under:

- “1. *The Ld CIT(A) has erred in passing the order without granting opportunity of being heard to the Appellant. It is submitted the order passed by Ld CIT(A) is completely erroneous , incorrect and unlawful. Thus order passed by Ld CIT(A) be set aside and incorrect addition made and confirmed of Rs 6,07,377/- be deleted in view of natural justice.*
2. *The Ld CIT(A) has erred in confirming the addition made of Rs 6,07,377/- disallowing the interest income claimed u/s 80P of the Act. It is submitted that the Appellant has never been informed regarding fixing of hearing by issuing notice or by any other communication mode whatsoever from the office of CIT(A). Thus the order passed by Ld CIT(A) without granting of opportunity of being heard be treated as null and void. Therefore the order so passed by CIT(A) be set aside and incorrect addition made of Rs 6,07,377/- be deleted.*
3. *The Ld. CIT(A) has erred in confirming the addition made of Rs. 6,07,377/- on account of interest income received from bank. It is submitted that interest income received from savings / deposits with the bank which in turn to be used for the for the objects of the society is clearly eligible for deduction u/s 80P(2)(a)(i) of the Act. On the facts and circumstances, the addition made towards interest income received of Rs. 6,07,377/- is completely illegal and unlawful and therefore the same be deleted.*
4. *Without prejudice to the above grounds, the Ld CIT(A) has erred in law and on facts in non granting the deduction of interest income claimed of Rs 6,06,192/- (from Co.Op. Bank) u/s 80P(2)(d) of the Act. On the facts and circumstances of the case, the incorrect addition made of Rs 6,06,192/- deserves to be deleted. It may held so now.*
5. *Without prejudice to the above grounds, Ld. CIT(A) has erred in considering the interest income received on investment with bank of Rs 6,07,377/- as fully taxable u/s. 56 of the Act without allowing the Pro-rata expenditures incurred u/s 57 of the Act. It is submitted that the only net interest income received after allowing the Pro-rata expenditure incurred be taxed.”*

14. In parity with our observations in ITA No. 1670/Ahd/2018, the interest income derived by the assessee society from investment in

ADC Bank amounting to Rs.6,06,192/- is eligible for deduction under s.80P of the Act on first principles, subject however to verifications by AO as directed in that appeal. However, the interest income derived from Axis Bank amounting to Rs.1,185/- would not be similarly not eligible for deduction under s.80P(2) of the Act.

15. In the result, appeal of the assessee is partly allowed.

16. In the combined result, both appeals of the assessee are partly allowed.

This Order pronounced in Open Court on 28/02/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 28/02/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।